

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:06CV29-03-MU

RICHARD KEITH POE,)	
)	
Plaintiff,)	
)	
v.)	<u>O R D E R</u>
)	
DR. JOSEPH VAN NORT, et. al.,)	
)	
Defendants.)	
)	

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed February 8, 2006. (Document No. 1.)

Plaintiff Complaint, filed as a § 1983 claim, essentially contains allegations of false documentation of his medical records by various doctors and health care professionals employed at Memorial Mission Hospital in Asheville, North Carolina. As best as this Court can piece together from Plaintiff's Complaint and exhibits, Plaintiff seems to be complaining that the doctors and medical staff from Mission Memorial Hospital falsified his medical records by relying on hearsay statements from Plaintiff's girlfriend and sister in filling out his medical history on two occasions in April 2001 and February 2002.¹ On both of these occasions, Plaintiff was not in custody, but apparently is now. A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured

¹ In particular, Plaintiff seems to take offense to references in his medical record that Plaintiff threatened to harm himself and others, that he had a history of violence and that he was suicidal and depressed. However, there is no allegation that the medical personnel taking down Plaintiff's history from Plaintiff's sister and girlfriend knew the information provided was false. Additionally, in most cases, the person taking the medical history attributed the information to the source that provided it.

by the Constitution by a person acting under color of state law. The doctors and medical personnel at Mission Memorial Hospital, a private hospital, who treated Plaintiff, a non prisoner at the time, were not state actors and therefore cannot be sued under 42 U.S.C. § 1983. Plaintiff's Complaint is therefore DISMISSED. Moreover, Plaintiff's Complaint contains allegations that this Court construes as frivolous and clearly do not state a claim for relief. Therefore this case is also dismissed for failure to state a claim for relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Complaint is Dismissed.

SO ORDERED.

Signed: February 9, 2006



Graham C. Mullen
United States District Judge

